

CAUSE NO. ACT/015/025 / DOCKET NO. 92-041

IN THE MATTER OF THE POTENTIAL  
PATTERN OF VIOLATIONS, INCLUDING  
NOTICES OF VIOLATION N91-35-1-1  
N91-20-1-1, AND 91-26-7-2(#2),  
CO-OP MINING COMPANY, BEAR CANYON  
MINE, ACT/015/025, EMERY COUNTY, UTAH

DIVISION'S EXHIBITS

<u>EXHIBIT #</u>	<u>DATE</u>	<u>DESCRIPTION</u>
#1	10/27/92	Possible Pattern of Violations
#2	2/27/91	Notice of Violation No. N91-35-01-01
#3	4/30/92	Letter/ to Wendell Owen from Lowell P. Braxton Re: Hindrance Violation
#4	7/2/91	Notice of Violation No. N91-26-7-2
#5	8/20/91	Letter/ to Wendell Owen from Dianne R. Nielson Re: Potential Pattern of Violations
#6	12/04/91	Letter/ to Dianne R. Nielson from Wendell Owen Re: Compliance Program

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<u>EXHIBIT #</u>	<u>DATE</u>	<u>DESCRIPTION</u>
#7	2/25/92	Letter/ to Dianne R. Nielson from Lowell P. Braxton Re: Pattern of Violations Determination
#8	5/15/92	Letter/ to Wendell Owen from Dianne R. Nielson
#9	7/27/92	Findings, Conclusions and Order

December 2, 1992v

10/27/92

POSSIBLE PATTERN OF VIOLATIONS FOR

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ACT-015-025

12/01/90 - 01/01/92

ASSESSMENT	NOV/CO#		ISSUED DATE		VIOLATION TYPE
Final	NOV N91-35-1-1	1/1	02/27/91	L	Other
Final	NOV N91-26-4-3	3/3	04/19/91	L	Other
Final	NOV N91-20-1-1	1/1	04/26/91	L	Other
Final	NOV N91-34-2-1	1/1	05/20/91	L	Other
Final	NOV N91-26-7-2	1/2	07/02/91	L	Other
Final	NOV N91-26-7-2	2/2	07/02/91	L	Other
Final	NOV N91-40-1-1	1/1	11/15/91	L	Other
Final	NOV N91-35-8-1	1/1	12/04/91	L	Other
Final	NOV N91-40-2-2	2/2	12/19/91	L	Other

*Division's*

**EXHIBIT**

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extension, the permittee may request a further extension in accordance with the procedures of R645-400-328.200.

329. Enforcement actions at abandoned sites. The Division may refrain from using a notice of violation or cessation order for a violation at an abandoned site, as defined in R645-100-200., if abatement of the violation is required under any previously issued notice on order.

### 330. Suspension or Revocation of Permits.

331. The Board will issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the State Program should not be suspended or revoked, if the Board determines that a pattern of violations of any requirements of the State Program, or any permit condition required by the Act exists or has existed, and that each violation was caused by the permittee willfully or through an unwarranted failure to comply with those requirements or conditions. A finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. Violations by any person conducting coal mining and reclamation operations on behalf of the permittee will be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

### 332. Pattern of Violation.

332.100. The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12-month period, after considering the circumstances, including:

332.110. The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit; and

332.120. The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit; and

332.130. The extent to which the violations were isolated departures from lawful conduct.

332.200. If after the review described in R645-400-332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she will recommend that the Board issue an order to show cause as provided in R645-400-331.

332.300. The Director will promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the State Program, or the permit during three or more state inspections of the permit area within a 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she will recommend that the Board issue an order to show cause as provided in paragraph R645-400-331.

### 333. Number of Violations.

333.100. In determining the number of violations within a 12-month period, the Director will consider only violations issued as a result of a state inspection carried out during enforcement of the State Program.

333.200. The Director may not consider violations issued as a result of inspections other than those mentioned in R645-400-333.100 in determining whether to exercise his or her discretion under R645-400-332.100, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

334. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director will review the permittee's history of violations to determine whether a pattern of violations caused by the permittee's willful or unwarranted failure to comply exists pursuant to this section, and will make a recommendation to the Board concerning whether or not an order to show cause should issue pursuant to R645-400-331.

### 335. Hearing Procedures.

335.100. If the permittee files an answer to the show cause order and requests a hearing, a formal public hearing on the record will be conducted pursuant to the R641 Rules before the Board or at the Board's option by an administrative hearing officer. The hearing officer will be a person who meets minimum requirements for a hearing officer under Utah law. At such hearing the Division will have the burden of establishing a prima facie case for suspension or revocation of the permit based upon clear and convincing evidence. The ultimate burden of persuasion that the permit should not be suspended or revoked will rest with the permittee.

The Board or Officer will give 30 days written notice of the date, time and place of the hearing to the Director, the permittee and any intervenor. Upon receipt of the notice the Director will publish it, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and will post it at the Division office closest to those operations. Upon written request by the permittee, such hearing may at the Board's option be held at or near the mine site within the county in which the permittee's operations are located.

335.200. Within 60 days after the hearing, the Board will prepare a written determination, or the Officer will prepare a written determination to the Board, as to whether or not a pattern of violation exists. If the determination is prepared by the hearing officer, it will be reviewed by the Board which will make the final decision thereon. If the Board finds a pattern of violations and revokes or suspends the permit and the permittee's right to mine under the State Program, the permittee will immediately cease coal mining operations on the permit area and will:

335.210. If the permit and the right to mine under the State Program are revoked, complete reclamation within the time specified in the order; or

335.220. If the permit and the right to mine under the State Program are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

### 340. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

341. A notice of violation or cessation order will be served on the permittee or his designated agent promptly after issuance, as follows:

(6) Any person who is injured in his person or property through the violation by an operator of any rule, order, or permit issued pursuant to this chapter may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under Utah workmen's compensation laws.

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40-10-22. Violation of chapter or permit conditions - Inspection - Cessation order, abatement notice, or show cause order - Suspension or revocation of permit - Review - Costs assessed against either party.

(1)(a) Whenever, on the basis of any information available, including receipt of information from any person, the division has reason to believe that any person is in violation of any requirement of this chapter or any permit condition required by this chapter, the division shall immediately order inspection of the surface coal mining operation at which the alleged violation is occurring, unless the information available to the division is a result of a previous inspection of the surface coal mining operation. When the inspection results from information provided to the division by any person, the division shall notify that person when the inspection is proposed to be carried out, and that person shall be allowed to accompany the inspector during the inspection.

(b) When, on the basis of any inspection, the division determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The cessation order shall remain in effect until the division determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the division pursuant to subsection (1)(e). Where the division finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of same, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the division shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the division deems necessary to abate the imminent danger or the significant environmental harm.

(c) When, on the basis of an inspection, the division determines that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall issue a notice to the permittee or his agent fixing a reasonable time but not more than 90 days for the abatement of the violation and providing opportunity for conference before the division. If upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and upon the written finding of the division, the division finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining and reclamation operations or the portion of same relevant to the violation. The cessation order shall remain in effect until the division determines that the violation has been abated or until modified, vacated, or terminated by the division pursuant to subsection (1)(e). In the order of cessation issued by the division under this subsection (1)(c), the division shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(d) When on the basis of an inspection the division determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the division also finds that these violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions or that these violations are willfully caused by the permittee, the board shall be requested to issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a conference is requested, the division shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the board shall immediately suspend or revoke the permit.

(e) Notices and orders issued under this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the division, and the notices and orders shall be in writing and shall be signed by the director, or his authorized representative who issues such notice or order. Any notice or order issued under this section may be modified, vacated, or terminated by the division, but any notice or order issued under this section which requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a conference is held before the division.

(2)(a) The division may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the surface coal mining and reclamation operation is located or in which the permittee of the operation has his principal office, whenever such permittee or his agent:

(i) Violates or fails or refuses to comply with any order or decision issued by the division under this chapter;

(ii) Interferes with, hinders, or delays the division or its authorized representatives in carrying out the provisions of this chapter;

(iii) Refuses to admit the authorized representatives to the mine;

(iv) Refuses to permit inspection of the mine by the authorized representative;

(v) Refuses to furnish any information or report requested by the division in furtherance of the provisions of this chapter; or

(vi) Refuses to permit access to and copying of such records as the division determines necessary in the carrying out the provisions of this chapter.

(b) The court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under subsection (2)(a)(i) shall continue in effect until the completion or final termination of all proceedings for review of that order under this chapter, unless, prior to this completion or termination, the district court granting the relief sets it aside or modifies it.

(3)(a) A permittee issued a notice or order by the division pursuant to the provisions of subsections (1)(b) and (1)(c), or any person having an interest which may be adversely affected by the notice or order, may apply to the board for review of the notice or order within 30 days of receipt of it or within 30 days of its modification, vacation, or termination. Upon receipt of this application, the board shall cause such investigation to be